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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

OCT 25 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
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Eligibility for the Specialized ) GN Docket No. 94-90  
Mobile Radio Services and Radio )  
Services in the 220-222 MHz Land )  
Mobile Band and Use of Radio )  
Dispatch Communications )

COMMENTS OF MCCAW CELLULAR COMMUNICATIONS, INC.

McCaw Cellular Communications, Inc. ("McCaw"),<sup>1</sup> by its attorneys, hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>2</sup> McCaw supports the Commission's proposal to remove the prohibition on cellular and other common carrier mobile operators providing dispatch service over their facilities. For the reasons discussed below, this prohibition should be directly and promptly removed.

The Commission has proposed to amend its rules "to permit all mobile service common carriers to provide dispatch service."<sup>3</sup> McCaw concurs with the Notice's tentative conclusion that the restriction on the provision of dispatch services by cellular and other common carrier mobile service

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<sup>1</sup> McCaw is now a wholly-owned subsidiary of AT&T Corp.

<sup>2</sup> FCC 94-202 (Aug. 11, 1994) ("Notice"); Erratum, Mimeo No. 44407, GN Docket No. 94-90 (Aug. 18, 1994). The original comment and reply comment filing dates were extended to, respectively, October 5, 1994, and October 20, 1994. Order, GN Docket No. 94-90 (Sept. 16, 1994).

<sup>3</sup> Notice at ¶ 30.

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operators is no longer necessary. As recognized in the Notice and the Commission's commercial mobile radio service ("CMRS") proceedings,<sup>4</sup> the CMRS marketplace already is highly competitive, and will become even more competitive with the advent of personal communication services ("PCS") offerings. This state of affairs obviates any concerns about potential anticompetitive conduct on the part of common carrier mobile service licensees in the dispatch market.

Indeed, entry by a new group of service providers will have positive benefits for the public interest. As pointed out in the Notice, this entry "would enhance competition in the dispatch market and thereby provide consumers with expanded choice and lower prices."<sup>5</sup> Existing service providers can apply their expertise to design service arrangements meeting the needs of potential dispatch customers. In addition, the already established facilities of cellular carriers and other mobile service operators may enable them to make service available -- at competitive rates -- in areas where current options are limited.

The Commission has queried, in response to SMR industry concerns, about the role of other CMRS licensees in the dispatch market and has noted concerns about potential

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<sup>4</sup> See, e.g., Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411 (1994) (Second Report and Order).

<sup>5</sup> Notice at ¶ 30.

anticompetitive behavior.<sup>6</sup> The Commission accordingly suggests alternatives to an outright repeal of the current dispatch restriction, including a "sunset" of the rule at a future date (such as August 10, 1996) or a grant of authority permitting mobile common carrier licensees to provide dispatch service only on a secondary basis or with a limit on the amount of system capacity that may be deployed in dispatch offerings.<sup>7</sup> In light of the lack of competitive risks and the benefits to be derived from mobile carrier entry into the dispatch marketplace, no such transitional mechanisms are required. Rather, to achieve the associated public interest benefits most expeditiously, the dispatch prohibition should be promptly and directly removed.

With respect to competitive considerations, the Commission has noted that, at present, "in the private land mobile services, most dispatch is provided on an internal, private basis, although dispatch is also available on commercial and shared-use systems."<sup>8</sup> Clearly, whatever competitive strategies are implemented by common carriers, internal and shared use systems will remain available and indeed may be the preferred option for some requirements for dispatch arrangements. Conversely, McCaw anticipates that

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<sup>6</sup> Id. at ¶ 31.

<sup>7</sup> Id. at ¶¶ 31-33.

<sup>8</sup> Id. at ¶ 12.

any concerns about cellular and other mobile service common carriers devoting substantial portions of their spectrum to dispatch offerings simply are not realistic. Other service offerings are likely to be more highly remunerative to such operators.

At the same time, however, cellular and other mobile service carriers may, as noted above, be able to take advantage of their existing facilities to permit the offering of competitive cellular services. Such services might be attractive to entities that otherwise could not justify installing their own system or that cannot feasibly participate in a shared use arrangement. In terms of competition with traditional SMR service providers, there is no reason to believe that common carriers providing dispatch services could in any way engage in inappropriate discriminatory pricing or cross-subsidization or otherwise place competitors at an unfair competitive disadvantage.

Moreover, allowing cellular carriers to provide dispatch service over their existing facilities will help to promote the Commission's regulatory parity goals. Many SMR operators are developing enhanced SMR facilities that are promoted as providing an alternative to cellular service. These systems currently are free to provide dispatch service. Similarly, the rules governing PCS, which also is expected to compete with cellular service to some extent, contain no limitation

on licensee ability to provide dispatch service over cellular frequencies. There is no justification for continuing to restrict the ability of cellular and other common carrier mobile service licensees from the provision of service offerings that otherwise are available from their direct competitors.

For all the reasons stated above, the Commission should remove the restriction on common carrier mobile service operators providing dispatch communications over their facilities. This restriction should be immediately lifted, with no transitional period. The public interest will be served by approving cellular and other mobile service common carrier provision of dispatch service.

Respectfully submitted,

MCCAW CELLULAR COMMUNICATIONS, INC.

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